



Comptroller General
of the United States

Washington, D.C. 20548

REDACTED VERSION'

Decision

Matter of: Stone & Webster Engineering Corporation

File: B-255286.2

Date: April 12, 1994

William A. Shook, Esq., Preston, Gates, Ellis, Rouvelas & Meeds, for the protester.

Kenneth B. Weckstein, Esq., and Raymond Fioravanti, Esq., Epstein, Becker & Green, for Burns and Roe Company, an interested party.

Robert B. Meighan, Esq., Agency for International Development, for the agency.

Peter A. Iannicelli, Esq. and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. While agency's technical evaluation deviated from the evaluation scheme set forth in the request for proposals (RFP), protest is denied where recalculation of protester's and awardee's technical scores in accord with RFP evaluation scheme results in insignificant changes to total technical scores and would not have changed the outcome of the competition.

2. Protest alleging that evaluators improperly considered an evaluation factor, general strategy, that was not set forth in the request for proposals (RFP) is denied where the evaluation documents show that evaluation was conducted consistent with the RFP's stated criteria and that general strategy was not evaluated as a separate factor, but as confirmed in discussions, was considered as part of several technical factors.

3. Award to offeror with the highest combined number of technical and cost points is not objectionable because agency may properly use the combined scores achieved under the technical/cost formula set forth in the request for proposals (RFP) as the basis for its technical/cost tradeoff; since the RFP's selection formula already accounted for both technical merit and proposed costs, the

The decision issued April 12, 1994, contained proprietary information and was subject to a General Accounting Office protective order. This version of the decision has been redacted. Deletions in text are indicated by "[DELETED]."

contracting officer was not required to perform any further cost/technical tradeoff analysis in support of the award decision.

4. Agency conducted meaningful discussions where it reasonably led the protester into areas of its proposal that required amplification or clarification. Agency was not required to hold discussions on proposal deficiencies that were due to the protester's lack of diligence or competence in preparing its proposal or to discuss every aspect of the proposal that received less than the maximum possible score.

DECISION

Stone & Webster Engineering Corporation (S&W) protests the Agency for International Development's (AID) award of two contracts to Burns and Roe Company (B&R) pursuant to request for proposals (RFP) No. OP/CC/N-93-09. Basically, S&W contends that AID improperly: (1) did not evaluate proposals in accord with the RFP's evaluation scheme, (2) did not consider the cost savings represented by S&W's offer, and (3) did not hold meaningful discussions with S&W.

We deny the protest.

Issued on July 16, 1994, the RFP solicited offers for providing energy sector technology based services to the newly independent states of the former Soviet Union in order to achieve the goals and objectives of AID's Energy Efficiency and Market Reform Project. "Technology based services" were defined as services that are primarily technical in nature and applicable to industrial operations, including data collection, analyses, and evaluation. The services are to focus on improving the energy and operating efficiencies of the production, conversion, transportation, and utilization of oil, natural gas, and coal resources; and generating, transmitting, and using electricity. The services are also to be directed toward conversion of the overall operation of the independent states from centrally planned to market oriented economies and from publicly to privately owned facilities.

The RFP contemplated award of two contracts, each for an initial 2.5-year period with an option for an additional 2.5-year period.¹ The RFP stated that both contracts would

¹The RFP stated that the selected offeror would be awarded a cost reimbursement contract for "core" services, including program support, set forth in the RFP's statement of work and a companion, requirements-type contract for emergent services complementary to and within the overall scope of the core contract.

be awarded to the offeror whose combined technical and cost scores promised the greatest value to the government. In this connection, the RFP set forth a formula for determining greatest value by calculating a combined score on the basis of technical scores being worth 80 percent and cost scores worth 20 percent of the total combined score. The lowest overall cost proposal, including options and any fee, was to receive 20 points; higher cost proposals were to receive proportionally lower points. Cost proposals were also to be evaluated for realism and reasonableness.

Five proposals were received by the July 26, 1993, date set for receipt of initial proposals. Initial proposals were evaluated and all five offers were considered to be in the competitive range. Discussions were conducted with all competitive range offerors, and all five submitted best and final offers (BAFO) by the September 8 closing date. Evaluation of BAFOs revealed that B&R's offer received the highest total combined score under the RFP's evaluation formula while S&W's was third-highest.² The contracting officer determined that B&R's offer represented the greatest value to the government, and, on September 30, 1993, he awarded the contracts to B&R.

The protester alleges a host of improprieties throughout all phases of the procurement, from the weighting of evaluation subfactors to the technical evaluation and the selection decision itself. The allegations and the arguments in support of them are extremely voluminous, and, therefore, we will not restate and discuss the details of each one here. However, we considered all of the arguments raised by S&W,

²The agency evaluated the protester's and the awardee's BAFOs as follows:

Offeror	<u>B&R</u>	<u>S&W</u>
Evaluated Cost	[DELETED]	[DELETED]
Cost Score (20 points maximum)	[DELETED]	[DELETED]
Raw Technical Score (100 points maximum)	[DELETED]	[DELETED]
Weighted Technical Score (weighted @ 80%)	[DELETED]	[DELETED]
Total Combined Score (cost + weighted technical scores)	[DELETED]	[DELETED]

B&R, and AID, as well as the rest of the record in resolving the protest.

The protester alleges that AID's evaluation of technical proposals was deficient because: (1) some evaluation subfactors were accorded more weight than was proper under the RFP's evaluation scheme; (2) the evaluators considered an evaluation factor that was not set forth in the RFP; and (3) the evaluation scores and selection decision are not supported by the record.¹ We deny the protest on these grounds because we believe that the allegations either are not supported by the record or, even if true, the mistakes made were trivial and of no legal consequence and did not affect the outcome of the competition.

Evaluating the relative merits of competing proposals is a matter within the discretion of the contracting agency since the agency is responsible for defining its needs and the best method of accommodating them. Simms Indus., Inc., B-252827.2, Oct. 4, 1993, 93-2 CPD ¶ 206. In reviewing an agency's evaluation, we will not reevaluate proposals but instead will examine the agency's evaluation to ensure that it was reasonable and consistent with the stated evaluation criteria. Id.

The RFP listed five technical evaluation factors (worth a total of 100 points) and their respective weights as follows:

1. organization and presentation of the proposal (5 points);
2. understanding the anticipated work (20 points);
3. relevance of the management plan to the expected work program (35 points);
4. personnel and staffing (25 points);
5. offeror's corporate experience (15 points).

¹Initially, S&W also argued that AID improperly evaluated one evaluation subfactor--ability to recruit and retain qualified staff and short term personnel--under the corporate experience factor rather than the personnel and staffing factor as stated in the RFP. The agency reported that this change was incorporated into the RFP by amendment. As S&W did not address the issue in its comments on the report, the issue is considered abandoned. See Heimann Sys. Co., B-238882, June 1, 1990, 90-1 CPD ¶ 520.

Within each evaluation factor, the RFP listed a number of subfactors but did not state their weights. For example, under the fifth evaluation factor, offeror's corporate experience, the listed subfactors were:

- a. capability to handle the size and scope of the contemplated work;
- b. demonstrated experience of a relevant nature;
- c. international experience in non-Western countries; and
- d. demonstrated ability to retain qualified staff and short term personnel.

The protester complains that AID improperly deviated from the RFP's evaluation scheme by giving some evaluation subfactors more weight than others. Because the RFP did not state any subfactor weights, S&W argues, AID was required to consider each subfactor of equal weight to all other subfactors within a particular evaluation factor.

Where the RFP lists evaluation subfactors but does not specify the weight or relative priority to be given to each, the subfactors are to be considered approximately equal in importance. See Informatics, Inc., B-194734, Aug. 22, 1979, 79-2 CPD ¶ 144. Here, the evaluation materials show that AID did not give equal weight to all subfactors listed under a particular evaluation criterion. For example, as noted above, the RFP showed the offeror's corporate experience evaluation factor to be comprised of four unweighted subfactors; AID's evaluation considered the first subfactor, capability to handle the size and scope of the contemplated work, to be worth six technical points while the three remaining subfactors were each worth only three technical points.

The agency admits that the evaluation committee gave one subfactor more weight than others within the same evaluation factor in evaluating three different factors.⁴ However, using the raw scores given for each subfactor, AID recalculated the overall weighted technical scores of both S&W and B&R on the basis of all subfactors within each evaluation factor being accorded equal weight. The agency determined that the net difference between total weighted technical scores as originally calculated and using equally weighted subfactors is approximately [DELETED]. Therefore,

⁴In fact, the evaluation documents reveal that subfactors were weighted unequally in evaluating four of the five evaluation factors.

AID concludes that the difference in scoring is negligible and did not deprive S&W of an award to which it was otherwise entitled.

The protester does not refute AID's contention that the weighted technical point totals for S&W and B&R are [DELETED] regardless of whether subfactors are equally weighted. However, the protester asserts that it was prejudiced by AID's not revealing that certain subfactors were considered more important than others because it would have paid particular attention to areas represented by the higher weighted subfactors in preparing its proposal.

We recomputed the technical scores on the basis of equally weighted subfactors and found that S&W's and B&R's total technical point scores [DELETED] unchanged when proper weighing is applied, thus confirming AID's analysis. In fact, our recomputation showed that the adjustment to total technical scores as a result of using equally weighted subfactors is actually [DELETED]. The agency's award decision was based upon S&W's BAFO receiving a total of [DELETED] technical points and B&R's receiving a total of [DELETED] technical points--a difference of [DELETED]. Therefore, the minor changes to total technical scores required by proper subfactor weighing are insignificant and would not have changed the outcome of the competition. The protester states generally that it would have changed its proposal if it had known that some subfactors were considered more important than others but does not explain how it would have altered its proposal. Accordingly, while AID's initial calculation of technical scores was improper, we deny the protest because we do not believe that S&W was competitively prejudiced. See Moran Assocs., B-240564.2, Nov. 27, 1991, 91-2 CPD ¶ 495; Arawak Consulting Corp., B-232090, Nov. 8, 1988, 88-2 CPD ¶ 457; B & W Serv. Indus., Inc., B-224392.2, Oct. 2, 1986, 86-2 CPD ¶ 384.

The protester also contends that the evaluation of technical proposals was improper because AID evaluated proposals on the basis of an evaluation factor, "general strategy," that was not listed as an evaluation factor in the RFP. The agency responds that general strategy was not a separate evaluation criterion and that it was not evaluated as a separate factor by the technical evaluation committee. However, AID acknowledges that offerors' strategies were considered as part of the evaluation of several evaluation factors that were set forth in the RFP.

This contention has its genesis in the agency's report on the initial protest. In responding to the allegation that discussions were not meaningful, AID stated, among other things, that:

"Because of the number, breadth, and complexity of the activities included in the project, numerous subcontractors were involved in all of the proposals submitted. Project understanding, the management approach, team composition and experience, and general strategy were all very important factors in proposal evaluation, as indicated by the evaluation criteria listed in Section M.3 of the RFP. The all-encompassing nature of those evaluation criteria reflects the realities of the project." [Emphasis added.]

In our opinion, the protester has taken the agency's words out of their original context and unsuccessfully tried to show that the evaluators improperly considered a factor that was not listed in the RFP. We think that AID, in the above quoted report, was trying to convey that strategy, as well as the other things mentioned (e.g., team composition) would be considered across the entire range of the RFP's very broad or "all-encompassing" evaluation factors. This view is bolstered by the discussions letter in which AID asked S&W to: "[DELETED]." Thus, it should have been clear to S&W that strategy and policy would be considered as part of the evaluation of at least four of the stated evaluation factors.

Our examination of the evaluation documents, including individual evaluators' score sheets, shows that general strategy was neither evaluated nor scored as a separate and distinct evaluation factor. We also note that the RFP did state that strategy formulation and selection of appropriate tactics would be a significant evaluation subfactor under the understanding the anticipated work evaluation factor; the evaluation documents show that strategy was properly evaluated in this framework. Accordingly, this protest argument provides no basis for finding the evaluation to be inconsistent with the RFP's evaluation scheme.

The protester next contends that the evaluation of technical proposals was deficient because evaluators did not include narratives describing the strengths and weaknesses of each proposal in addition to the point scores they assigned for each evaluation factor or subfactor. According to S&W, the evaluation record is inadequate to support the award decision.

We have examined all of the evaluation documents. Every evaluator reviewed each proposal on each factor and subfactor that was stated in the RFP's evaluation scheme. The evaluators gave each proposal a numerical rating corresponding to each factor or subfactor to show how well the offer fulfilled the agency's requirements. Admittedly, each evaluator did not make a qualitative statement concerning the strength or weakness of each proposal corresponding to each factor or subfactor. Some evaluators merely listed the general strengths and weaknesses of proposals; others made narrative comments (e.g., "adequate") right next to the point score given a proposal for a particular factor or subfactor. For the most part, when they evaluated BAFOs, the evaluators merely indicated the change (or lack of change) in the point score on the original score sheet. In addition, at least one evaluator wrote general comments indicating why the overall score for a particular offer changed from initial to BAFO evaluation. While the narrative comments on the score sheets are often succinct, and there are some gaps in documenting the point scores given, the comments are adequate to support the point scores. Furthermore, as discussed below, the evaluation record also includes discussion letters indicating areas of concern to the evaluation panel. In these circumstances, we have no basis to conclude that the evaluation records were inadequate to support the selection decision. See PHP Healthcare Corp.; Sisters of Charity of the Incarnate Word, B-252799 et al., May 4, 1993, 93-1 CPD ¶ 366.

The protester also asserts that AID did not consider the significant cost savings represented by S&W's offer. The protester contends that, in view of the fact that its proposed cost was [DELETED] below B&R's, the agency was required to award S&W the contracts. The protester further argues that AID was required to perform a cost/technical tradeoff analysis to justify the premium price the agency will pay to have B&R perform the work.

In a negotiated procurement, a procuring agency has the discretion to select a more highly rated technical proposal if doing so is reasonable and is consistent with the evaluation scheme set forth in the RFP. PHP Healthcare Corp.; Sisters of Charity of the Incarnate Word, supra; Systems Eng'g Assocs. Corp., B-231597, Oct. 4, 1988, 88-2 CPD ¶ 315. We have upheld awards to higher-rated offerors with significantly higher proposed costs where it was determined that the cost premium was justified considering the significant technical superiority of the selected offeror's proposal. Id. We have also recognized the propriety of using a cost/technical tradeoff formula specified in the RFP in selecting an offer. See Management Sys. Designers, Inc., B-244383.3, Sept. 30, 1991, 91-2 CPD ¶ 310, and cases cited.

Here, the RFP indicated that technical factors were considered significantly more important than cost and set forth a selection formula that showed technical merit to be worth 80 percent and cost to be worth 20 percent of the total combined cost/technical score. Even though S&W received the maximum cost score (20 points) in recognition of the significant cost savings represented by its proposal, B&R received the highest number of combined cost/technical points⁵ primarily because of its greater technical merit. In view of the RFP's 80/20 technical/cost ratio, the contracting officer's decision to award the contracts to B&R was not objectionable and was consistent with the RFP's evaluation and selection scheme. Since the RFP's selection formula already accounted for both technical merit and proposed costs, the contracting officer was not required to perform any further cost/technical tradeoff analysis in support of the award decision. Management Sys. Designers, Inc., supra.

The protester argues that AID failed to conduct meaningful discussions. According to S&W, the agency's written discussion questions⁶ were "very general and did not describe in any detail" any significant deficiencies in S&W's initial proposal. The protester asserts that it could have improved its proposal in areas that had been downgraded by evaluators had meaningful negotiations been held. The agency responds that each competitive range offeror, including S&W, was notified by letter of any significant deficiencies contained in their own proposal. According to AID, each deficiency contained in S&W's initial proposal can be traced directly to an RFP clarification, question or request for additional information contained in its discussions letter to S&W.

In its initial technical evaluation report, the evaluation panel listed [DELETED] "weaknesses" found in S&W's initial proposal. [DELETED] of these perceived deficiencies were addressed directly in AID's discussion letter. For example, the evaluators criticized S&W's proposal, stating: "[DELETED]"; the discussions letter asked S&W to "[DELETED]." In a second example, the evaluators stated that S&W's proposal contained a "[DELETED]"; the discussions letter asked S&W to "[DELETED]." In a third example, the evaluators stated that "[DELETED]"; the discussions letter directed S&W to "[DELETED]." Thus, contrary to S&W's assertion, for each of these [DELETED] deficiencies the

⁵As indicated above, B&R received a combined total of [DELETED] cost/technical points while S&W received [DELETED] [DELETED] points.

⁶No oral discussions were held.

discussions letter contained a corresponding question that was clear and precise and reasonably should have led S&W into the areas of its proposal that were considered deficient.

The discussions letter did not contain statements directly relating to the other [DELETED] "weaknesses" listed in the evaluation report. [DELETED] of these concerned S&W's [DELETED]. The evaluators stated: "[DELETED]." The evaluators also stated:

"[DELETED]"

Even though AID labeled these criticisms as weaknesses, they were not really technical deficiencies that needed to be pointed out to S&W during discussions. All offerors should know that [DELETED] is an inherent part of preparing a proposal. To the extent that S&W's proposal was [DELETED], S&W did not do an adequate job. Agencies are not required to hold discussions based on proposal deficiencies or weaknesses that are due to an offeror's own lack of diligence or competence in preparing its proposal. See Engineers Int'l, Inc., B-224177, Dec. 22, 1986, 86-2 CPD ¶ 699. In any event, AID reports that S&W did in fact [DELETED].

In addition, one of the three evaluators was concerned that S&W's [DELETED] might not be appropriate and the panel listed this as a weakness in S&W's proposal. The discussions letter did not directly raise this point with S&W. However, the letter did clarify that offerors [DELETED] and AID reports that S&W did [DELETED].

In our opinion, AID was not required to identify S&W's [DELETED] as a deficiency. Where a proposal is considered acceptable and within the competitive range, the agency is not obligated to discuss every aspect of the proposal that receives less than the maximum score. See Veco/Western Alaska Constr., B-243978, Sept. 9, 1991, 91-2 CPD ¶ 228. While one of the evaluators did question [DELETED], the record shows that S&W received [DELETED] points from each of the evaluators on the [DELETED] subfactor. In fact, S&W's proposal received the second-highest total score-- [DELETED]--on this subfactor. Thus, in spite of being listed as a weakness, S&W's proposal received a very high score for the [DELETED] and it does not appear that S&W was downgraded on this subfactor or that its proposed [DELETED] really represented a serious deficiency obligating AID to discuss the matter.

Agencies are required to conduct meaningful discussions with all competitive range offerors. Miller Bldg. Corp., B-245488, Jan. 3, 1992, 92-1 CPD ¶ 21. In order for

discussions to be meaningful, contracting officials must advise offerors of deficiencies in their proposals and afford offerors an opportunity to revise their proposals to satisfy the government's requirements. Veco/Western Alaska Constr., supra. Agencies are not obligated to afford all-encompassing discussions; agencies are only required to lead offerors into the areas of their proposals considered deficient. See Ebasco Constructors, Inc.; et al., B-244406 et al., Oct. 16, 1991, 91-2 CPD ¶ 341. Based on the record of the written discussions, we think the agency satisfied its duty to hold meaningful discussions here.

The protest is denied.

Robert P. Murphy
Acting General Counsel